



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
300 DON GASPAR AVE.
SANTA FE, NEW MEXICO 87501-2786
Telephone (505) 827-5800
www.ped.state.nm.us

MARIANA D. PADILLA
SECRETARY DESIGNATE OF PUBLIC EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
OFFICE OF SPECIAL EDUCATION
Complaint Resolution Report
West Las Vegas Public Schools
Case No. 2425-23
January 6, 2025

This Report does require corrective action. See pages 7-9.

On November 20, 2024, a complaint was filed with the New Mexico Public Education Department's (PED) Office of Special Education (OSE) under the federal Individuals with Disabilities Education Act (IDEA) and the implementing Federal Regulations and State Rules governing publicly funded special education programs for children with disabilities in New Mexico.¹ The OSE has investigated the complaint and issues this report pursuant to 34 C.F.R. § 300.152(a)(5) and 6.31.2.13(H)(5)(b) NMAC.

Conduct of the Complaint Investigation

The PED's complaint investigator's investigation process in this matter involved the following:

- review of the complaint and supporting documentation from Complainant;
- review of District's responses to the allegations, together with documentation;
- review of District's compliance with federal IDEA regulations and state NMAC rules;
- interview with Complainant (Parent), Occupational Therapist, Speech and Language Therapist and Special Education Teacher.

¹ The state-level complaint procedures are set forth in the federal regulations at 34 C.F.R. §§ 300.151 to 153 and in the state rules at Subsection H of 6.31.2.13 NMAC.

- research of applicable legal authority.

Limits to the Investigation

Federal regulations and state rules limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint is received. 34 C.F.R. § 300.153(c); 6.31.2.13(H)(2)(d) NMAC. Any allegations related to professional or ethical misconduct by a licensed educator or related service provider, or allegations related to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act are not within the jurisdiction of this complaint investigation and, as a result, were not investigated.

Issues for Investigation

The following issues regarding alleged violations of the IDEA, its implementing regulations and State rules, are addressed in this report:

1. Whether District failed to implement Student’s IEP, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC;
2. Whether District ensured that personnel providing special education and/or related services to Student were qualified and appropriately licensed, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC;
3. Whether District’s actions and/or omissions towards Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

General Findings of Fact

1. Student is a 6-year-old attending District elementary school, and the Complainant is Parent of Student;
2. Student has an Individualized Educational Plan (IEP);
3. Student’s IEP states that his primary disability and eligibility is developmental delay.
4. Parent states that Student’s school has been without a special education teacher [“Teacher”] since October 2024.

5. Parent also states that Student has missed services and I-station testing since the beginning of October 2024. During interview, Parent did not have additional issues to address beyond what was written in State complaint.
6. District does not contest that between October 1, 2024, and October 16, 2024, Teacher was only providing services to students 1 day a week with her other time spent at a different school or working on other tasks such as IEP meetings. District also does not contest that Teacher resigned on October 16, 2024, and between that date and November 24, 2024, there were no qualified special education teachers at Student's school.
7. Based on the total information available, Student did not have his IEP implemented between October 1, 2024, and November 25, 2024. After November 25, 2024, Student's hours of service went back to normal, which covers all required service hours and accommodations in Student's IEP.
8. Student's IEP provides accommodations of small group setting and extended time for District-Wide Assessments (IStation testing) in reading and math.
9. Other accommodations listed that require a special education teacher on Student's IEP are:
 - a) Grades will be determined by GEN Ed instructor in collaboration with SPED Teacher on work completed;
 - b) Conference with special education teacher in case of failing grade;
 - c) Call for an IEP meeting to discuss placement in case of failing grades;
 - d) 120 minutes weekly with Teacher in regular classroom;
 - e) 60 minutes weekly with Teacher in special education setting;
 - f) 30 minutes weekly for individual and or group setting speech services in the special education setting with speech-language therapist;
 - g) 15 minutes weekly for occupational services in the special education setting with occupational therapist.
10. All District personnel interviewed consistently shared that Student is a joy to work with.
 - a) Teacher stated that Student did not receive special education services between October 16, 2024, and November 25, 2024 and received only partial special education services from October 1, 2024 to October 16, 2024. Student did not fall behind on IStation testing during this time.
 - b) Occupational Therapist stated that Student has received all his occupational services per his IEP with no lapse or missed time except when Student was absent.
 - c) Speech and Language Therapist stated that Student has received all his occupational services per his IEP with no lapse or missed time except when Student was absent.

11. During the period that there was no qualified special education teacher, Student missed the following services required by his IEP:
- a) 120 minutes weekly with Teacher in regular classroom; and
 - b) 60 minutes weekly with Teacher in special education setting;

Discussion and Conclusions of Law

Issue No. 1: Whether District failed to implement Student’s IEP, as required by 34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC;

Special education is “specially designed instruction provided at no cost to the Parents, that is intended to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39(a)(1). This specialized designed instruction is adapting the content, methodology or delivery of instruction to address the unique needs of an individual child. 34 C.F.R. § 300.39(b)(3).

Once the IEP is developed, it must be implemented with fidelity by staff that have the appropriate training, experience and credentials to assist students. 34 C.F.R. 300.323(c). An IEP must be implemented with all required components. 34 C.F.R § 300.324(b)(ii)(a). However, only material failures of implementation will result in a denial of FAPE. *See, Van Duyn v. Baker School District*. 5J, 502 F.3d 811, 822 (9th Cir. 2007).

With no special education teacher at Student’s school every day from October 1, 2024, to October 16, 2024, and no special education teacher available on any days between October 16, 2024, and November 25, 2024, Student’s special education services were not provided. Student did not miss IStation testing, occupational therapy or speech and language therapy services.

District failed to provide Student with special education services as mandated in his IEP.

As to Issue No. 1, the District is cited, corrective action is needed.

Issue No. 2: Whether District ensured that personnel providing special education and/or related services to Student were qualified and appropriately licensed, pursuant to 34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC;

Once the IEP is developed, it must be implemented with fidelity by staff that have the appropriate training, experience and credentials to assist students. 34 C.F.R. § 300.323(c). Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for their assigned responsibilities,

pursuant to 34 CFR § 300.156. § 6.31.2.9(B)(9)(a) NMAC. A local superintendent or governing body of a charter school shall give written notice to parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject. § 6.63.10.13 NMAC.

Due to Student not having access to a special education teacher per his IEP, between October 1, 2024 and November 24, 2024, District did not have qualified and appropriately licensed personnel to implement Student's IEP for special education services. As the Teacher has returned full time to Student's school, this is not an on-going issue.

As to Issue No. 2, the District is cited, corrective action is needed.

Issue No. 3: Whether District's actions and/or omissions towards Student resulted in a denial of a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101 and 6.31.2.8 NMAC.

The cornerstone for analysis of whether a free appropriate public education has been or is being provided is within the four corners of the IEP itself. *See Sytsema*, 538 F.3d at 1316. As noted above, Student's IEP provides that IEP services will be provided by a special education teacher. This was not done. This violation, detailed in Issue Number 1, is a substantive violation and a denial of FAPE.

If a procedural violation occurs, then it results in a denial of a free appropriate public education only if the procedural inadequacies: (1) impeded a child's right to a free appropriate public education, (2) significantly impeded the parent's opportunity to participate in the decision-making process for a provision of a free appropriate public education; or (3) caused deprivation of educational benefit. 34 C.F.R. 300.513(a)(2). Procedural defects are insufficient to set aside an IEP unless a rational basis exists to believe the procedural errors seriously hampered the parents' opportunity to participate in the decision process, compromised the student's right to an appropriate education, or caused a deprivation of educational benefits. *See O'Toole*, 144 F.3d 692 at 707 (10th Cir. 1998). In other words, technical deviations alone are insufficient to establish a denial of free appropriate public education. *See Urban v. Jefferson County Sch. Dist. R-1*, 89 F.3d 720, 726 (10th Cir. 1996).

Procedural violations must adversely impact the student's education or significantly impede on the parent's opportunity to participate in the process. *See Sytsema v. Acad. Sch. Dist. No. 20*, 538 F.3d 1306 (10th Cir. 2008). Procedural defects must amount to substantive harm for

compensatory services. *See Garcia v. Bd. of Educ. of Albuquerque Pub. Sch.*, 520 F.3d 1116, 1125-26 (10th Cir. 2008).

State rules require District to have properly licensed special education staff to implement IEPs of special education students. The facts set forth above clearly indicate that this did not happen.

Failure to provide Student with a sufficiently qualified special education teacher resulted in a denial of a FAPE.

As to Issue No. 3, the District is cited, corrective action is needed.

Summary of Citations

IDEA/State Rule Provisions Violated	Description of Violation
34 C.F.R. § 300.320(a)(4); and 6.31.2.11(B)(1) NMAC	District failed to implement Student’s special education services as set forth in Student’s IEP
34 C.F.R. § 300.156 and 6.31.2.9(B)(9) NMAC	District failed to ensure that personnel providing special education and/or related services to Student were qualified and appropriately licensed
34 C.F.R. § 300.101 and 6.31.2.8 NMAC	District’s actions and/or omissions towards the Student resulted in a denial of a free appropriate public education (FAPE),

Required Actions and Deadlines

By January, 10, 2025, the Charter School’s Special Education Director must assure the OSE in writing that the Charter School will implement the provisions of this Corrective Action Plan (CAP). The OSE requests that the Charter School submit all documentation of the completed corrective actions to the individual below, who is assigned to monitor the Charter School’s progress with the Corrective Action Plan and to be its point of contact about this complaint from here forward:

Ms. Yaling Hedrick
 Corrective Action Plan Monitor
 Office of Special Education
 New Mexico Public Education Department
 300 Don Gaspar Avenue
 Santa Fe, NM 87501
 Telephone: (505) 795-2571

The file on this complaint will remain open pending the PED’s satisfaction that the required elements of this Corrective Action Plan are accomplished within the deadlines stated. District is advised that the OSE will retain jurisdiction over the complaint until it is officially closed by this agency and that failure to comply with the plan may result in further consequences from the OSE.

Each step in this Corrective Action Plan is subject to and must be carried out in compliance with the procedural requirements of the IDEA 2004 and the implementing federal regulations and State rules. Each step also must be carried out within the timelines in the Corrective Action Plan. If a brief extension of time for the steps in the Corrective Action Plan is needed, a request in writing should be submitted to the Corrective Action Plan Monitor. The request should include the case number, the date for the proposed extension, and the reason for the needed extension. The OSE will notify the parties of any extension granted.

Please carefully read the entire CAP before beginning implementation. One or more steps may require action(s) in overlapping timeframes. All corrective action must be completed no later than June 30, 2025 and reported to the OSE no later than July 11, 2025. All documentation submitted to the OSE to demonstrate compliance with the CAP must be clearly labeled to indicate the state complaint case number and step number.

Corrective Action Plan

Step No.	<u>Actions Required by District</u>	<u>Complete Actions By</u>	<u>Documents Required to be Submitted to PED OSE</u>	<u>Document Due Date</u>
1.	As described above, District will submit a written assurance to the PED OSE Corrective Action Plan Monitor that it will abide by the provisions of this Corrective Action Plan (CAP).	January 10, 2025	Written Assurance	January 10, 2025
2.	District Special Education Director and the school principal shall meet with the PED OSE Education Administrator assigned to the District and the PED OSE CAP Monitor to review the Complaint Resolution Report, the Corrective	January 17, 2025	Meeting Notes prepared by the District	January 24, 2025

	<p>Action Plan, and any other measures that District plans to take to ensure that the violations are corrected and do not recur. The District Special Education Director shall be responsible for arranging this meeting with OSE.</p>			
<p>3.</p>	<p>The School shall provide Student with the following compensatory education:</p> <ul style="list-style-type: none"> a. 480 minutes total for special education teacher time in a special education setting b. 960 minutes with special education teacher in regular classroom. <p>These compensatory services are above and beyond the regular services required by Student’s IEP. Student should not be removed from core or elective classes to receive compensatory service minutes.</p> <p>The schedule for compensatory services should be developed in collaboration with the parent and may include provisions for services in the summer months.</p> <p>The plan for compensatory education shall be documented through a formal prior written notice.</p>	<p>June 30, 2025</p>	<p>Documentation of delivery/provision of compensatory education services, including logs of services recorded in the PED-approved Excel spreadsheet log provided by the OSE CAP monitor.</p> <p>Prior Written Notice containing plan for compensatory services</p>	<p>Monthly from date of compensatory services plan until the compensatory education minutes are completed</p> <p>February 14, 2025</p>

	<p>If the District cannot provide compensatory education through District employed providers, it shall contract with a private provider to deliver these hours of compensatory education.</p>			
<p>4.</p>	<p>The District shall arrange to provide training to District staff (including special education teachers, special education administrators, diagnosticians and related service personnel). The training shall be provided by a person independent of the District with expertise in special education who was not involved in responding to this complaint. The training shall be conducted at District’s expense.</p> <p>The training shall address the following special education topics:</p> <ol style="list-style-type: none"> 1. Ensuring Appropriately qualified staff; and 2. Provision of accommodation and modifications. <p>If these trainings are consistent with trainings required in other pending corrective action plans, trainings offered for those other corrective action plans may satisfy this training requirement.</p>	<p>March 7, 2025</p>	<p>Submission of proposed trainer and trainer’s resume and proposed presentation for NMPED approval.</p> <p>Confirmation of the date of the training.</p> <p>Confirmation of attendees at the training and plan for addressing the provision of training to those staff not in attendance.</p>	<p>January 22, 2025</p> <p>February 10, 2025</p> <p>March 14, 2025</p>

This report constitutes the New Mexico Public Education Department's final decision regarding this complaint. If you have any questions about this report, please contact the Corrective Action Plan Monitor.

Investigated by:

/s/ Natalie Campbell

Natalie Campbell

Complaint Investigator

Reviewed by:

/s/ Miguel Lozano

Miguel Lozano, Esq.

Chief Counsel, Office of Special Education

Reviewed and approved by:

DocuSigned by:

Margaret Cage

1D32A08CC33B4F2...
Margaret Cage, Ed.D.

Deputy Secretary, Office of Special Education